IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 423 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

ANIRUDDHSINH MAHIPATSINH JADEJA

Appearance:

PUBLIC PROSECUTOR for Petitioner

NOTICE SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 17/08/2000

ORAL JUDGEMENT

#. Heard learned Public Prosecutor Mr.A.D.Oza and perused the papers. In this matter rule was issued and made returnable on 22.5.2000. The respondent has been served but no arrangement has been made by him for the

appearance before this Court.

#. It appears from the record that the respondent was tried for offences punishable under Section 302 of the I.P.C. as well as Section 5 of the TADA Act and under Section 25(1)(A) of the Arms Act etc. in Sessions Case No.23 of 1989 in the court of learned Additional Sessions Judge, which was a designated court. Offence was registered against the respondent on 15.8.88 under Crime Register No.105/88.

#. The matter was conducted by the learned Additions Sessions Judge who happened to be the presiding Judge of the Special Court constituted under the TADA Act. The respondent was acquitted by judgment and order dated 28.10.91. Thereafter the State preferred Criminal Appeal No.626 of 1997 arising out of the S.L.P. No.1982 of 1991 with Criminal Appeal No.1919 of 1996. The said matter was decided by the Hon'ble Supreme Court on 10.7.97. whereby the respondent came to be convicted and imprisonment for life has been imposed on him.

#. Thereafter, the petitioner submits that the arrest warrants were issued but could not be served upon the respondent since he was absconding and ultimately proceedings under Section 82 and 83 of Criminal Procedure Code, 1973 were initiated against the respondent and respondent was declared as absconding and order of attaching his property was passed. That, despite orders of the Hon'ble Supreme Court convicting the respondent, the respondent was not available to the police and, therefore, an order was passed by the Hon'ble Supreme Court on 18.2.2000 to the effect that Director General of Police of the State of Gujarat should take necessary action for arresting the respondents and, therefore, Special Police Force was constituted for arresting the respondent. That in the meantime, some offences were registered against the respondent and they are enumerated in para No.6 of the petition.

#. That in those 5 offences 34 accused have been arrested and six vehicles have also been attached which were used for the transportation of the respondent from one place to another.

#. Thereafter on 20.4.2000 the respondent himself appeared before the learned Sessions Judge at Rajkot and preferred certain applications, which have been placed along with the petition and orders passed thereon are in challenge.

#. Out of those applications Annexure-A is the application submitted by the respondent on 20.4.2000 stating that since he has surrendered, he may be taken in judicial custody and be sent to jail. The learned Sessions Judge passed the order that the accused is ordered to be taken in judicial custody.

#. The second application Annexure-B was presented on the same day. There, the respondent contended that he had surrendered himself and his life is under danger therefore orders be passed that the respondent be not transferred from Rajkot District Jail to any other jail and appropriate directions be issued to the Jailor. The learned Sessions Judge appears to have passed the order that till further orders the respondent be not transferred from Rajkot jail to any other jail. That the jail authority should follow the orders of this court (means to implement the aforesaid orders) or orders of the Hon'ble Supreme Court or of this court.

#. The third application Annexure-C is at page No.21. This appears to have been filed by the father of the respondent on the very day i.e. 20.4.2000. One of the prayers was that the respondent be not handed over to the custody of anybody. The leaned Sessions Judge appears to have passed an interim order - "that the respondent and his advocate be heard. The application has been considered and till further orders, the respondent be not handed over to the custody of any other person."

##. Thereafter on 20.4.2000 the respondent filed application Annexure-D stating that the custody of the respondent should not be handed over to anyone and he should not be taken out of the jail without hearing the respondent and his advocate Mr.Deepak Bhupendra Trivedi. Learned Sessions Judge appears to have passed order dated 20.4.2000 that the matter be fixed for hearing and District Govt. Pleader be served with the notice and the matter be kept on 26.4.2000.

##. The learned Public Prosecutor submitted an application (Annexure-E) at page 28 on 24.4.2000 stating that the matter was initially conducted by the learned Additional Sessions Judge who presided over the said designated court and, therefore, the matter may be transferred to him since other proceedings are also pending before his court. It seems that the learned Sessions Judge has passed the order as under :-

"Recorded and fixed for hearing".

##. Then the learned Pubic Prosecutor submitted second application Annexure-E at page 31 for cancellation of the previous orders passed ex-parte and without hearing the Public Prosecutor. That application was submitted on 26.4.2000.

##. Then the Commissioner of Police of Rajkot city has filed affidavit Annexure-E before the aforesaid court at page 39.

##. Thereafter, there was an application on 26.4.2000 filed by the Police Inspector, which is placed at page No.42 (Annexure-F) stating that the learned Judge had made certain observations in open court in presence of accused, advocates and journalists. He also made a prayer that an administrative order may be passed for transfer of the entire proceedings. The learned Sessions Judge appears to have passed an order that it will be decided as to whether or not the matter should be administratively transferred.

##. Feeling aggrieved of the aforesaid proceedings, the State has preferred this petition under Section 482 of the Criminal Procedure Code. It was initially filed as Criminal Revision Application but subsequently it has been converted into Special Criminal Application.

##. As stated above, though respondent was served, no arrangement has been made for defending the present petition. I have heard the learned Public Prosecutor and have perused the papers.

##. Now it is clear that as per the records and as per the arguments of the leaned Public Prosecutor the original case being Sessions Case No.23 of 1989 was conducted by the learned Additional Sessions Judge who presided over the designated court and, therefore, ordinarily further proceedings were required to be taken before him. However, instead of presenting himself before the learned Additional Sessions Judge, the respondent preferred to present himself before the learned Sessions Judge who took him into custody and orders have been passed on the strength of the applications submitted by the respondent.

##. The learned Public Prosecutor has submitted that all those orders have been passed without hearing and without issuing notice to the Public Prosecutor. Now the records do not show that the notices were issued to the Public Prosecutor or that the Public Prosecutor was heard before passing such orders. The orders do not say that notices

were issued to and served upon Public Prosecutor and the Public Prosecutor was heard. Therefore, it appears that as soon as applications were filed by the respondent before the learned Sessions Judge he passed aforesaid orders on the same day without hearing the Public Prosecutor and without issuing notice to the Public Prosecutor.

##. It is required to be considered that even if we take that the initial order of taking the respondent in judicial custody is an innocent order and it did not require hearing of the Public Prosecutor, the subsequent orders are certainly in favour of the respondent.

##. First order at Annexure-B clearly shows that the respondent be not transferred from Rajkot jail to any other jail. Now it would be for the State to decide as to the distribution of prisons for the accused persons. Prisoners undergoing different sentences may be kept and detained in separate prisons situated at different places. The accused prisoners undergoing heavy sentences may be kept in a particular jail and the accused prisoners undergoing light sentences may be kept in different prisons in accordance with the directions as a matter of policy of the State Government and if it is found to be unreasonable it would be possible or proper or even just for the court to interfere with the State Policy matter and also the decision of the State Government. Even otherwise the learned Sessions Judge could have passed orders after hearing the Public Prosecutor on the point as to whether there is any difficulty in detaining the respondent in Rajkot jail itself. If the State Government has decided that the accused prisoner, who has been suffering sentence for imprisonment for life is to be detained at Ahmedabad only then in that case prisoners have to be sent to the jail at Ahmedabad. They cannot be detained elsewhere. If any exception is made then there has to be some order passed in accordance with law. Without such orders accused persons cannot be detained elsewhere.

##. Same way the second application at Annexure-C also says that custody of the petitioner be not handed over to anyone else. Now if there is some allegation about the commission of some offence against respondent and some orders are obtained for the police custody or judicial custody of the respondent then in that case the respondent may be required to be handed over even in police custody under judicial orders of the courts. Therefore, there may not be a blank ban order that the custody of the respondent should not be entrusted or

handed over to anyone else. Normally respondent would remain in the jail in which he is required to stay. However, if his presence is required elsewhere then he has to be sent to the place where he is required to go for trial or for other purpose in accordance with law. There may not be transfer of custody illegally. At the same time, there may not be blanket ban against transfer of custody if it is done in accordance with law.

##. Even the Public Prosecutor has made grievance that in fact the original case was conducted by the learned Additional Sessions Judge and, therefore, the matter should be placed before the Additional Sessions Judge for further orders. It seems that the said application was made in April, 2000 and thereafter no order was passed for placing the matters before the appropriate court.

##. any way when the original case was conducted by the learned Additional Sessions Judge and when other proceedings are also reportedly pending before learned Additional Sessions Judge it would be in the fitness of things to say that all matters arising out of the original sessions case should be placed before the learned Additional Sessions Judge, who would be in a position to deal with all those matters so that there would not be any conflict of orders / directions.

##. Moreover, when the matter was conducted by the learned Additional Sessions Judge ordinarily the respondent should have surrendered before that court because that court would have records available with it for dealing with the case of the respondent. Even the applications submitted by the respondent before the learned Sessions Judge would be better dealt with by the learned Additions Sessions Judge having records and proceedings and material to deal with the same. The grievance of the learned Public Prosecutor that all orders have been passed ex-parte and without hearing the Public Prosecutor and without notice to the Public Prosecutor. It is to be seen that the orders have been passed on 20.4.2000. It is not shown as to why notice has not been issued to the Public Prosecutor and as to why Public Prosecutor has not been heard in the matter. Moreover, it is also to be seen that after passing the order on 20.4.2000 no notice appears to have been issued to the Public Prosecutor and the matter has not been heard thereafter. In the aforesaid facts, I am of the view that this is a fit case wherein the justice can be done to the parties by directing the matter to be placed before the court of the learned Additional Sessions Judge, which conducted the Sessions Case No.23/89 so that

further orders can be passed in the matter in accordance with law.

##. Certain orders have been passed by this court for staying the orders passed by the learned Sessions Judge, I am of the view that the said stay orders should continue till the learned Additional Sessions Judge passes final orders on the applications. It is made clear that the learned Additional Sessions Judge will pass appropriate order on those applications referred as above without being influenced by the orders passed by the learned Sessions Judge referred to hereinabove. The learned Additional Sessions Judge will not be influenced by the observations made by this court in this order. Therefore, his order will be completely independent in nature.

##. In the aforesaid view of the matter this petition is partly allowed and it is directed that the aforesaid matter shall be placed before the court of learned Additional Sessions Judge i.e. the court in which the Sessions Case No.123 of 1989 was tried, conducted and disposed on 28.10.91.

##. The learned Additional Sessions Judge of that court is directed to hear and dispose of the aforesaid applications of the respondent dated 20.4.2000 after hearing the parties and without being influenced by the orders of the learned Sessions Judge and without being influenced by the observations of this court, as aforesaid.

##. In view of the aforesaid position, the orders passed on 26.4.2000 by the learned Sessions Judge to the effect that it will be decided herein as to whether or not the application should be transferred administratively to the learned Additional Sessions Judge will be decided hereinafter will not survive since the matter is ordered to be placed before the learned Additional Sessions Judge. As said above, the stay orders passed by this court earlier staying the operation of the order of the learned Sessions Judge will continue to remain in effect till the learned Additional Sessions Judge passes final orders in the aforesaid matter. The petition is therefore allowed accordingly. Rule is made absolute to the extent indicated above. D.S. is Permitted.

(D.P.Buch, J.)

*Pvv